



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the tenant's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for compensation for a monetary loss or other money owed.

The hearing began at 1:30 pm, on July 19, 2021. No one was present. Shortly after, the tenant and their advocate called into the hearing, and they were affirmed.

The advocate submitted they served the landlord with the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on December 17, 2021, and provided the tracking number for the mail. The registered mail number is located on the cover page. I find the landlord was served in a manner required under the Act.

Testimony was taken on the merits of the tenant's application, and a decision was made in the absence of the landlord. Just prior to closing the hearing at 1:44, the advocate stated that the tenant received a text message from the landlord, who indicated that they were having trouble connecting to the hearing. I agreed to continue the hearing in order to allow the landlord to provide their evidence in response to the tenant's application.

The advocate phoned the landlord on a separate line and provided the landlord with the correct phone number and access code. At that point, the landlord connected to the hearing at approximately 1:47, was affirmed, and provided their testimony and referred to their documentary evidence.

The parties confirmed receipt of the other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation from the landlord?

Background and Evidence

This tenancy began on August 25, 2011, and the tenant vacated the rental unit on March 31, 2021. The monthly rent at the end of the tenancy was \$855.

The tenant's monetary claim is \$10,260, equivalent of 12 times the monthly rent payable under the tenancy agreement, at the end of the tenancy, for receiving the landlord's 2 Month Notice, as it has not been used for the stated purpose listed on the Notice.

The Notice received from the landlord was dated January 18, 2021, listing an effective date of March 31, 2021. The tenant submitted they vacated the rental unit on the effective date.

The reason for ending the tenancy states that the landlord entered into an agreement in good faith to sell the rental unit, all the conditions on which the sale depends have been satisfied and the purchaser has asked the landlord, in writing to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit. The 2 Month Notice listed the purchaser's name, who will be referred to in this Decision as "AN". A copy of the Notice was filed in evidence.

The tenant's application is based upon their assertion that the rental unit was not used for the stated purpose, as the purchaser who was listed on the 2 Month Notice, AN, did not occupy the residential property at any time, as the landlord sold the residential property to another buyer.

In response to the tenant's claim, the landlord proceeded first in the hearing.

The landlord referred to parts of the tenant's 59-page evidence package.

The landlord submitted that AN was the intended original buyer, but the sale to AN did not go through. The landlord submitted that AN requested the landlord in writing to issue the 2 Month Notice to the tenant. AN's written request, filed in evidence by the tenant, stated as follows:

*Where I have a contract to purchase (*residential property address*) I request that you give notice to (*tenant name*) to vacate the property on or before March 31 2021.*

It is my intention to occupy the property and the bank requires the house to be vacant.

[Reproduced as written except for anonymizing personal information to protect privacy]

The landlord explained that AN could not secure bank financing and they then were willing to sell the property to AN with a "vendor take-back mortgage". This was explained by the landlord as a seller-financed arrangement. The landlord wrote that AN refused their offer to carry AN's mortgage.

The landlord stated that an additional issue with AN was their refusal to attend a move-out inspection they were having with the tenant, at the end of the tenancy.

Later the landlord testified that the sale of the property to AN fell through because AN could not get bank financing and AN could not come up with the agreed-upon down payment.

The landlord submitted that AN "dropped the ball" as all they had to do was pay the deposit and they did not. Then AN "dropped another ball" when they did not get bank financing.

The landlord submitted that as AN did not do what they were supposed to do, they did what they had to do. The landlord stated they sold the property to another buyer as

quickly as possible, who did attend the move-out inspection, under the same financial terms as was offered to AN.

In response to my inquiry, that all conditions of sale were not completed, the landlord replied "correct."

The landlord filed copies of the purchase contract by the new owners of the residential property, BSN and HKN.

The advocate submitted text messages between the landlord and AN. The landlord informed AN that they had a walk through scheduled on April 2nd with the "fellow" who was interested in buying the property. Further in that text message, the landlord told AN that the other party had the full purchase in the bank and that if they were willing to take the property as-is, the landlord would sell to them.

The tenant filed an affidavit from AN. In this affidavit, AN submitted they had a contract with the landlord for the purchase price of \$125,00 and down payment of \$12,500 to be paid by March 26, 2021. AN wrote that they were completely surprised when on March 24, 2021, they received a text message from the landlord that someone else was interested in buying the property and that the landlord would be selling the residential property if the new buyer would take the property as-is.

The advocate submitted that Tenancy Policy Guideline 50 states that another purpose cannot be substituted for the purpose set out in the notice to end tenancy.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In the case before me, the undisputed evidence is that the landlord issued the tenant a 2 Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to section 49 of the Act, for a final, effective move-out date of March 31, 2021. The tenant complied with the Notice and vacated by the effective date.

The landlord marked the Notice indicating that they entered into an agreement in good faith to sell the rental unit, all the conditions on which the sale depended had been satisfied, and the purchaser has asked the landlord, in writing to give this Notice

because the purchaser or a close family member intends in good faith to occupy the rental unit.

Tenancy Policy Guideline (Guideline) states that the landlord has the burden to prove they accomplished the stated purpose within a reasonable period after the effective date of the notice.

The purchaser listed on the 2 Month Notice who gave a written request to the landlord was AN. The undisputed evidence is that AN did not purchase the property, and the landlord sold the residential property to other buyers on April 8, 2021.

From my review of the landlord's oral and written evidence, I interpret the landlord's position in this dispute was that they accomplished the stated purpose listed on the 2 Month Notice as they ultimately sold the residential property to another party as soon as the original sale to AN fell through. However, the stated purpose was that AN gave written notice to the landlord to issue the 2 Month Notice to the tenant as they intended to occupy the rental unit.

For this reason, I find the rental unit has not been used for the stated purpose as AN did not purchase the property.

I agree with the advocate that Policy Guideline 50 states that another purpose cannot be substituted for another purpose set out on the Notice. This is important in order to provide the tenant with recourse under the Act should the purchaser not occupy the rental unit after the sale.

Section 51(2) of the Act provides that the landlord or purchaser who asked the landlord to give the notice to end the tenancy, must pay the tenant an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if the landlord, or purchaser, does not establish that the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice.

I find the landlord's direct evidence shows that the sale was conditional on AN obtaining bank financing and paying a deposit and that the conditions on which the sale depended had not been satisfied when the landlord issued the 2 Month Notice. The landlord confirmed that the sale fell through because AN could not come up with the deposit and they could not obtain financing.

From this undisputed evidence, I find that the conditions of sale were not lifted at the time the landlord issued the 2 Month Notice to the tenant.

For these reasons, I find the landlord had no ground under section 49 of the Act to issue the Notice.

The landlord ought to have waited for the purchaser, AN, to obtain bank financing and pay the deposit, prior to issuing the Notice, as they were required to do so under section 49 (5) (c), or to wait until all the conditions on which the sale depends have been satisfied.

For the above reasons, I therefore find the tenant is entitled to monetary compensation equivalent to 12 months' rent as the rental unit was not used for the stated purpose listed on the 2 Month Notice.

I further find I do not have to consider extenuating circumstances in this matter, to excuse the landlord from paying this amount, as I have found the landlord had no ground to issue the Notice in the first place.

As a result, I grant the tenant a monetary award of \$10,260 as requested, which is the equivalent of monthly rent of \$855 for 12 months.

I grant and issue the tenant a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$110,260.

Should the landlord fail to pay the tenant this amount without delay, the tenant may serve the order on the landlord for enforcement purposes. The landlord is advised that costs of such enforcement are recoverable from the landlord.

Conclusion

The tenant's application for monetary compensation for the equivalent of 12 months' rent of \$10,260 is granted. The tenant is issued a monetary order in the amount of \$10,260.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*. Pursuant to

section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 20, 2022

Residential Tenancy Branch